

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

HIRAM LUIS DUCASSE, JR.,

Case No. 22-CV-2565 (WMW/JFD)

Petitioner,

v.

REPORT AND RECOMMENDATION

WARDEN LEJUNE,

Respondent.

This matter is before the Court on Mr. Hiram Luis Ducasse, Jr.’s petition for a writ of habeas corpus. (Dkt. No. 1.) The case has been referred to the undersigned United States Magistrate Judge for a Report and Recommendation pursuant to 28 U.S.C. § 636 and District of Minnesota Local Rule 72.1.

Mr. Ducasse’s habeas petition, however, does not present a cognizable habeas claim. Instead, the habeas petition challenges the conditions of Mr. Ducasse’s current incarceration—specifically, the alleged lack of dental care at the facility where Mr. Ducasse is now detained. As this Court explained in an order dated November 30, 2022, such conditions-of-confinement claims can be brought only in non-habeas civil proceedings. (*See* Dkt. No. 6 (citing *Spencer v. Haynes*, 774 F.3d 467, 470-71 (8th Cir. 2014)).) A habeas petition may be reinterpreted as a civil complaint, but only with permission of the litigant. *See Spencer*, 774 F.3d at 471. Accordingly, Mr. Ducasse was given 30 days to inform the Court whether he intended to proceed with non-habeas litigation at this time, with failure to make such an election (through payment of the

\$402.00 filing fee for civil actions or an application to proceed *in forma pauperis*) resulting in a recommendation that this matter be dismissed without prejudice for failure to state a cognizable habeas corpus claim. (*See* Dkt. No. 6 at 2-3.)

That deadline has now passed, and Mr. Ducasse has not taken either of the actions directed by this Court's prior order through which he could elect to proceed. In fact, Mr. Ducasse has not communicated with the Court about this case at all since commencing this action. Accordingly, this Court now recommends, in accordance with its prior order, that this action be dismissed without prejudice.

RECOMMENDATION

Based on the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED** that this matter be **DISMISSED WITHOUT PREJUDICE**.

Dated: January 13, 2023

s/ John F. Docherty
JOHN F. DOCHERTY
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).